IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4285 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER

Versus

SECRETARY- S.T.KARMACHARI MANDAL

Appearance:

1. Special Civil Application No. 4285 of 1999

MR KV GADHIA for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/03/2004

ORAL JUDGEMENT

This petition has been filed against the judgment and award made by the Industrial Tribunal, Ahmedabad in Reference (I.T.) No. 330 of 1992 dated 17th September,

1998. By the said award, the petitioner has been directed to make available to the respondent all the benefits which have been made available to the permanent employee including the weekly holidays, causal holidays etc., and further whatever benefits that may accrue in favour of the respondent in accordance with the terms and settlement that had taken place from time to time.

1.1. It appears from the record of the petition that the industrial dispute existing between the respondent and the petitioner was referred to the Tribunal for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 on the question whether respondent should be reimbursed the amount towards weekly holidays from the date of his entry into petitioner's service and secondly whether he should be paid double the amount of the salary for all the casual leave, sick leave, public holidays etc., and thirdly, whether, the benefits with regard to salary and incidental benefits, arising from settlements dated 1st August, 1974, 1st August, 1976, 1st August, 1979, 1st August, 1982 and 1st August, 1987 should be made available to the respondent with retrospective effect and lastly till the decision is rendered on the aforesaid issues no order bringing about change in the service conditions of the respondent be passed, or his service should be terminated.

1.2. It appears that the respondent has been working as part time pump operator in the Divisional Workshop, Ahmedabad Division, since the year 1974. Evidently, he had to work for five hours i.e. from 6:00 a.m. to 9:00 a.m. and from 5:30 p.m. to 7:30 p.m. He was continuously rendering service without any break. He was not even given weekly holidays. It was further averred that he was made to work on holidays and no salary was being paid for this. His grievance was that since he had been working since long, all the benefits like weekly holidays, casual leave, sick leave, earned leave, etc., could have been made available to him. It was his grievance that the employer should also pay the amount towards P.F. and also the employers contribution. The same is not being done. It was his grievance that the permanent status was not granted to him only because the employer i.e. the petitioner wanted to avoid making all these benefits available to him.

1.3. The petitioner resisted the claim of the respondent by filing reply at Exh.4. It has denied all the averments that have been made by the respondent in the statement of claim. The main contention of the petitioner was that there was no full time job for the

operator in the Corporation and, therefore, there was no question of paying full time salary to him. It was also denied that respondent was required to work for five hours or more in a day. The petitioner's case is that the benefits with regard to weekly holidays, casual leave etc., were made available to only permanent employees and there was no provision for making this benefit available to even part timers. On this averment, it was prayed that the claim of the respondent be dismissed.

2. The Tribunal after going through the material and evidence that was produced before it, came to the conclusion that the petitioner was continuously rendering service for the last 16 years. He was working full time i.e. five hours in a day and that the post on which he was working was of permanent nature. The Tribunal therefore, came to the conclusion that all the aforesaid benefits ought to be made available to the respondent. Ultimately, it partly allowed the Reference and gave the aforesaid directions to the petitioner. It is this award which is now under challenge in this petition.

3. Mr. K.V. Gadhia learned advocate appearing for the petitioner has submitted that the respondent has been awarded benefits which are actually made available to the permanent employee under the labour's settlement that was entered into between the recognized Union of the Workers and the petitioner. As per Clause-60 thereof, part time workers of the Corporation were not covered under the settlement and, therefore, such benefit cannot be made available to the respondent. He has further submitted that even on facts, claim of the respondent was not tenable. As a part timer, he was not required to be paid the aforesaid benefits.

3.1. As against that Mr. M.H. Rathod learned advocate appearing for the respondent has supported the judgment of the Tribunal. He has also placed reliance on the judgment delivered by this Court in case of Gujarat State Road Transport Corporation v. Rekhaben G. Patel dated 12th February, 2004 in Special Civil Application No. 3076 of 1999.

4. Having carefully considered the submissions and having carefully gone through the record of the petition and in particular, the judgment of the Tribunal, it clearly appears that the respondent has successfully proved the factual averment that had been raised in the statement of claim. The finding given by the Tribunal that he was working for about 16 years in the Corporation and further he was rendering service for five hours in a

day, all throughout, appears to be just and proper and no interference on this count is required to be made, while deciding the petition under Article 227 of the Constitution of India.

4.1. The fact remains that the respondent had been working on permanent post as part timer for well over 16 years. It is also on record that he has not been given weekly leave nor has he been given the benefit of other kinds of leaves or public holidays etc. In similar circumstances, in the case of Gujarat State Road Transport Corporation v. Rekhaben G. Patel, this Court has held that a person working on part time basis on a post which is permanent, rendering service of permanent nature is required to be given all the benefits which are being enjoyed by a permanent employee. That observation will squarely apply to the facts of this case.

5. In view thereof, it is clear that the respondent is to be treated at par with permanent employee and he should be made available all the benefits which are available to the permanent employee working in that class. I do not see any reason, to interfere with the direction that has been given by the Tribunal.

5.1. Since on the first aspect, I am in agreement with the Tribunal, I do not see any necessity to decide the second question whether part timer stands covered under the aforesaid settlement.

In view of the aforesaid, this petition has no merit and it is deserves to be dismissed and it is hereby, ordered to be dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

[AKSHAY H. MEHTA, J.]

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